

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN SENATE JUNE 16, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 665

Introduced by Assembly Member Frazier
(Coauthor: Senator Berryhill)

February 24, 2015

An act to amend Sections 200, 203.1, and ~~12000~~ 3004 of, and to add Sections 200.5 and 200.6 to, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 665, as amended, Frazier. Hunting or fishing: local regulation.

(1) The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Wildlife exercises various functions with regard to the taking of fish and game. Under existing law, a city or county has no authority to regulate fish and game except that a city or county may adopt an ordinance that incidentally affects fishing and hunting for the protection of public health and safety.

This bill would provide that the state fully occupies the field of the taking and possession of fish and game. The bill would provide that unless otherwise authorized by the Fish and Game Code, other state law, or federal law, the commission and the department are the only entities that may adopt or promulgate regulations regarding the taking or possession of fish and game on any lands or waters within the state.

(2) Existing law requires the commission, when adopting certain regulations relating to the taking or possession of resident game birds, game mammals, and fur-bearing mammals, to consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.

This bill would require the commission to consider these factors when adopting certain regulations relating to the taking or possession of fish, amphibians, and reptiles. The bill would also require the commission to consider public health and safety when adopting these regulations.

~~(3) Existing law generally makes any violation of the Fish and Game Code or any rule, regulation, or order made or adopted under the code a misdemeanor, and specifies that a violation of designated statutes or regulations is either an infraction or a misdemeanor.~~

~~This bill would make a violation of a specified statute relating to the intentional discharge of a firearm or release of an arrow or crossbow bolt over or across a public road or other established way open to the public in an unsafe and reckless manner an infraction or a misdemeanor.~~

~~(3) Existing law makes it unlawful for a person to intentionally discharge a firearm or release an arrow or crossbow bolt over or across a public road or other established way open to the public in an unsafe and reckless manner. Existing law makes a violation of this provision a misdemeanor.~~

~~This bill would delete the “reckless” element from that provision. Because the bill would expand the definition of a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

SECTION 1. Section 200 of the Fish and Game Code is amended to read:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles for purposes that include, but are not limited to, public health and safety, to the extent and in the manner prescribed in this article.

(b) No power is delegated to the commission by this article to regulate the taking, possessing, processing, or use of fish, amphibia, kelp, or other aquatic plants for commercial purposes, and no provision of this code relating or applying thereto, nor any regulation of the commission made pursuant to these provisions, shall be affected by this article or any regulation made under this article.

SEC. 2. Section 200.5 is added to the Fish and Game Code, to read:

200.5. (a) The Legislature finds and declares all of the following:

(1) The California Supreme Court In re Makings (1927) 200 Cal. 474, determined that Section 25 ½ of Article IV of the California Constitution, as currently set forth in Section 20 of Article IV, prohibits local governmental entities from regulating, or interfering with, fish and game matters in any manner and places this responsibility with the Legislature in order to conserve California's fish and wildlife and permit the greatest use of fish and game resources compatible with the reasonable protection thereof.

(2) The commission was established in 1870 to assist in the scientific, evidence-based management of California's fish and wildlife resources. The California Constitution permits the Legislature to delegate to the commission certain powers relating to the management of fish and game, and the Legislature has delegated to the commission regulatory powers over the taking and possession of fish and game, as set forth in this code.

(3) Hunting and fishing are statistically among the safest outdoor recreational activities, and are already well regulated by the state through means that include, but are not limited to, mandatory safety and education requirements, discharge laws for firearms used to

1 take wildlife, and regulations adopted by the commission.
2 Additional local regulation would be unnecessary, would impede
3 the proper administration of state fish and game laws, and would
4 create significant enforcement issues. Hunting and fishing activities
5 are also compatible with other recreational uses on many public
6 lands and waters throughout the state.

7 (b) In enacting this section and Section 200.6, it is the intent of
8 the Legislature to affirm, subject to applicable federal law, the
9 exclusive legal authority granted to the commission and the
10 department with regard to the taking and possession of fish and
11 game and thereby ensure necessary statewide control by the
12 commission and the department over fish and game matters for
13 wildlife conservation purposes, the protection of, and access to,
14 hunting and fishing opportunities for the public, and for public
15 health and safety purposes.

16 (c) It is the intent of the Legislature to expressly preempt local
17 ordinances regarding the taking or possession of fish and game,
18 as provided in Section 200.6.

19 (d) It is the intent of the Legislature that local governments
20 pursue requests for regulation of hunting, fishing, and depredation
21 permits pursuant to Section 207.

22 SEC. 3. Section 200.6 is added to the Fish and Game Code, to
23 read:

24 200.6. (a) The state fully occupies the field of the taking and
25 possession of fish and game pursuant to this code, regulations
26 adopted by the commission pursuant to this code, and Section 20
27 of Article IV of the California Constitution, and all local ordinances
28 and regulations regarding the taking and possession of fish and
29 game are subject to this section.

30 (b) The commission, the department, or any other governmental
31 entity legally authorized to affect hunting and fishing on navigable
32 waters held in public trust shall ensure that the recreation rights
33 of the public guaranteed under Section 25 of Article I and Section
34 4 of Article X of the California Constitution are protected in a
35 manner consistent with those provisions.

36 (c) (1) Unless expressly authorized by this code, other state
37 law, or federal law, the commission and the department are the
38 only entities in the state that may adopt or promulgate regulations
39 regarding the taking or possession of fish and game on any lands
40 or waters within the state.

(2) Nothing in this section prohibits a public or private landowner, or the landowner's designee, from controlling access or use, including hunting or fishing, on property that the landowner owns in fee, leases, holds an easement upon, or is otherwise expressly authorized to control for those purposes in a manner consistent with state law. However, nothing in this section abridges the public's rights of navigation, fishing, hunting, or other recreation on waters of the state (see *Bohn v. Albertson* (1951) 107 Cal.App.2d 738; *People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040; and 68 Ops.Cal.Atty.Gen. 268 (1985)).

(3) This section applies only to activities for which a hunting or fishing license or a depredation permit is required by this code or regulations adopted by the commission, and to activities carried out by an employee or agent of the department as part of his or her official duties. Nothing in this section shall be construed to diminish or affect existing legal protections for fish and game-related management, recreation, or other activities not specifically mentioned in this section.

SEC. 4. Section 203.1 of the Fish and Game Code is amended to read:

203.1. When adopting regulations pursuant to Section 203 or 205, the commission shall consider populations, habitat, food supplies, the welfare of individual animals, public health and safety, and other pertinent facts and testimony.

~~SEC. 5. Section 12000 of the Fish and Game Code is amended to read:~~

~~12000. (a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor.~~

~~(b) Notwithstanding subdivision (a), a person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or of a misdemeanor:~~

- ~~(1) Section 2009.~~
- ~~(2) Subdivision (b) of Section 3004.~~
- ~~(3) Subdivision (a) of Section 6596.~~
- ~~(4) Section 7149.8.~~
- ~~(5) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations.~~

~~(6) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations.~~

~~(7) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations.~~

~~(8) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations.~~

~~(9) Section 251.7 of Title 14 of the California Code of Regulations.~~

~~(10) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations.~~

~~(11) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations.~~

~~(12) Section 630 of Title 14 of the California Code of Regulations.~~

SEC. 5. Section 3004 of the Fish and Game Code is amended to read:

3004. (a) It is unlawful for ~~any~~ a person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, ~~to hunt or to discharge while hunting, any firearm or other deadly weapon while~~ within 150 yards of ~~any~~ an occupied dwelling house, residence, or other ~~building or any building, or within 150 yards of a barn or other outbuilding used in connection therewith.~~ *with an occupied dwelling house, residence, or other building, to either hunt or discharge a firearm or other deadly weapon while hunting.* The 150-yard area is a “safety zone.”

(b) It is unlawful for ~~any~~ a person to intentionally discharge ~~any~~ a firearm or release ~~any~~ an arrow or crossbow bolt over or across ~~any~~ a public road or other established way open to the public in an unsafe ~~and reckless~~ manner.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

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